

# ***TENNESSEE ADR NEWS***

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## **VORP Start-Up Project** **Underway**

By Cassandra Adams

Last July the AOC was awarded a 4 year, \$400,000 Edward Byrne Memorial Grant, through the Tennessee Office of Criminal Justice Programs (OCJP), to fund the Victim Offender Reconciliation Program (VORP) Start-Up Project. The project will provide start-up funds for new VORP mediation centers throughout Tennessee. In October, Cassandra W. Adams joined the AOC staff as the project director.

In 1993, the Victim-Offender Mediation Center Act (§16-20-101) was enacted declaring that victim-offender mediation centers can meet the needs of Tennessee's citizens by providing forums where people may voluntarily mediate their disputes. Judges can refer cases they deem appropriate for mediation to a VORP center if the parties are interested in an alternative to the adjudication process. VORPs recruit and train volunteer mediators to serve as neutrals. In juvenile cases, statistics have shown a more than 50% reduction in the number of juveniles who re-offend when they have participated in the VORP mediation process.

During the project, Cassandra will work to identify entities interested in applying for start-up funds and work with new centers in establishing their programs. Additionally, she will provide support to the existing centers. To date, Tennessee has 7 VORP programs: The Community Mediation Center in Knoxville, Community Mediation Services in Oak Ridge, Community Mediation Center in Crossville, (VORP...Continued to Page 3.)

## **United States Postal Service** **REDRESS Program**

### **An Opportunity for Mediation**

By Wright Tisdale

The United States Postal Service (Postal Service) is in the process of implementing programs to facilitate the resolution of employment disputes. The Postal Service has established an alternative dispute resolution process that is called REDRESS. REDRESS stands for Resolve Employment Disputes, Reach Equitable Solutions Swiftly. This process is designed to resolve complaints at an early stage and create a positive culture change in the workplace environment of the Postal Service. It is the goal of the Postal Service to have REDRESS fully implemented and available to all employees by January 2000; in fact a number of Rule31 mediators may have recently received an application to participate in REDRESS.

The REDRESS program is voluntary on the part of employees/complainants. When an employee contacts a Postal Service EEO counselor, he or she is offered the option of mediation in lieu of counseling, and is free to accept or reject the offer. Any settlement under the REDRESS program cannot violate any collective bargaining agreement. Any sexual harassment cases, while being appropriate for mediation like other EEO cases, requires additional safeguards that have been established by the Postal Service. The Postal Service anticipates that all other cases can and should be mediated. Mediation will not be appropriate when an active criminal or Inspection Service investigation or a worker's (Postal...Continued to Page 4.)

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## **Application Process Now Open for National Roster of Environmental Conflict Resolution and Consensus Building Professionals**

The U.S. Institute of Environmental Conflict Resolution is now accepting applications for the National Roster of Dispute Resolution and Consensus Building Professionals. The roster will include practitioners with experience as neutrals on environmental issues. It will serve as a resource for the Institute in making referrals and sub-contracting with practitioners on federal projects and as a resource for federal agencies when seeking to contract with a practitioner. The roster will eventually be available to all on the web.

Complete information about the Institute and the development and purpose of the roster, the entry criteria and a score sheet are available on the Institute's web site: [www.ecr.gov](http://www.ecr.gov). Your roster application can be completed and submitted online from the site. Just follow the instructions under the roster link. The application process is ongoing and continuous; however, an initial application period closed at the end of November 1999. Online applications will be processed first. Hard copy applications are available from the Institute.

If your question is not answered on the web site or you are unable to get the information and application online, please contact:

Joan C. Calcagno  
 Roster Manager  
 U.S. Institute for Environmental Conflict Resolution  
 110 South Church Avenue, Suite 3350  
 Tucson, AZ 85701  
 email: [Roster@ecr.gov](mailto:Roster@ecr.gov)  
 520-670-5299



### **Mediators on the TBA-Link**

All Rule 31 approved mediators are located on the mediation page on the TBA-Link. This link has recently been revised. It now lists all approved mediators in a database format. You now have the capability of doing a search and down loading any of the fields available. The public access address is: [www.tba.org](http://www.tba.org). Choose the category for "Mediation".

## **Mediation in Davidson County Juvenile Court**

By Linda Podis

The Davidson County CASA, Court Appointed Special Advocate, recently implemented a new mediation service for Juvenile Court. The service's primary focus is to improve the administration of justice for children involved in custody and visitation disputes by helping their families resolve conflicts and obtain needed services. CASA has been handling mediations in Davidson County since 1995. This year CASA received funding for a Family Conciliation/Mediation Project coordinator. The coordinator goes to court one morning a week to provide mediation services on the spot to parties interested in mediation.

Every Thursday morning, before court begins, I make a brief announcement where I describe the availability of mediation. Establishing or modifying visitation is usually the issue to be mediated. I emphasize that in mediation the parties have input in deciding the visitation schedule for their children. During mediation, parents, stepparents and other extended family members have an opportunity to contribute toward meeting the visitation schedule. They also have an opportunity to air other problems that a judge does not have time to hear. If the parties reach an agreement, I write up as an order and we present it to the judge. The judge reviews it and asks the parties if they agree to the document. If there is no objection, then the agreement becomes the order.

The mediator has an opportunity to be as creative as the parties will allow as long as the goal of visitation is met. In one case, the parents lived fifty miles apart. It was a burden on one party to drive 100 miles round trip to drop the child off to visit the other parent. So they compromised and changed the drop off point to a Golden

Gallon convenience store half way between the two homes. To figure that out was no stretch of one's right brain, but it was an option the parties would not have agreed upon without the help of the mediator.

Most of the parties do not have attorneys, however, the one mediation I conducted with attorneys on both sides was successful. The parties were able to tell me what they wanted from the mediation. We were able to resolve one of the many issues through the mediation. This saved a lot of time and money for all involved.

Once the parties decided to mediate, there is great success in getting an agreement. The mediator facilitates the resolution of conflicts for the benefit of the parents and extended family members. More important, the children of these families benefit most of all, by spending time with people who care about them.

Linda is a Rule 31 Listed Civil and Family Mediator and the CASA Family Conciliation/ Mediation Project Coordinator.

### **(VORP...Continued from Page 1.)**

Mediation Services of Putnam County in Cookeville, VORP of Nashville, The Mediation Center in Columbia and the newest program, Mid-South VORP in Lewis, Perry, Hickman, Lawrence and Wayne counties. Interest in starting new centers has already surfaced in Sumner, Blount, Sevier and Hardeman counties. Depending on the number of grant applicants, the start-up grants will be in the \$15,000-20,000 range.

If you have questions about the project, feel free to contact Cassandra at 615-741-2687.

Cassandra Adams is Director of the VORP Start Up Project at the AOC.

**Postal... Continued from Page 1.)**  
compensation case is pending.

In preliminary studies, the satisfaction rate of this transformative mediation program was between 85% and 90% with all parties, including employees and unions, having the same degree of satisfaction. This satisfaction rate also applied to mediators who are relatively new or know nothing about the Postal Service and employment law. Approximately 69% of the cases settle with mediation and another 15% dropped out or settled shortly after mediation. One of the real important results of this program is that people are learning better communication skills from participating in the mediation and training that has gone on inside the Postal Service.

To participate as a mediator in the REDRESS program, there are certain requirements that must first be met. To mediate a Postal Service dispute, applicants must be on the REDRESS National Roster. To be listed on the Roster, applicants must complete the following three (3) steps. Completion of these requirements only guarantees that the participant will be listed on the National Roster from which parties can select a mediator.

I. Complete and return to the Postal Service an “ADR Provider Survey” indicating that the mediator has participated as lead or co-mediator in at least 10 cases and has completed a 3 day mediation course that includes extensive role playing.

II. Attend a two (2) day Postal Service advanced mediation skills training course provided at no cost to the applicant. There are no exceptions to this requirement. Applicants must attend the entire two (2) day course, including an evening session on the first day. Upon conclusion of the course, applicants will be certified as having completed the mandatory training.

III. Upon completion of the mandatory training, each applicant must mediate one case for the Postal Service on a

*pro bono* basis. Each applicant will be evaluated during the *pro bono* mediation by an EEO ADR Specialist and/or the EEO ADR Coordinator. This evaluation will be used to determine if the applicant will be listed on the REDRESS National Roster.

Transformative mediation is the only approach or mediation style or format that is to be used in the REDRESS program.

The selection of mediators will be done locally and may be based on one or more of the following factors: to some extent, the number of requests for mediation in a given district will influence the selection of mediators. The mediator’s schedule/availability is also important. The Postal Service REDRESS mediations are scheduled “on the clock” during the Postal Service employee’s work hours or “tour of duty.” There are three (3) tours in a 24-hour period: Tour 1 - 10:30 PM - 6:00 AM; Tour 2 - 6:00 AM - 3:00 PM; and Tour 3 - 3:00 PM - 11:00 PM.

Mediators will be asked to mediate cases on any of these tours of duty. Special circumstances of a case or special requests or needs of the parties will also be an influencing factor in the selection of the mediator. *Pro bono* case evaluation is also another important factor that may be considered in the selection of the mediator.

Mediators selected to the REDRESS National Roster must abide by the Postal Service Standards of Practice for Postal Service mediations. All mediators will be independent contractors for the Postal Service and as such, they will be responsible for their actions related to any mediation service provided. The Postal Service encourages all qualified mediators to investigate and possible purchase liability insurance coverage.

(Postal...Continued on Page 6.)

## **Ethical Considerations in Mediation**

By: Ken Jackson

### Introduction

In the topics addressed in this series of articles, I have tried to summarize the basic principles that the many versions of mediation ethical standards have in common. Drawing on many sources in the literature, I am particularly indebted to the teachings of Ken Roney whose course on Advanced Civil Mediation, sponsored by the ADR Commission, was devoted to these issues.

### Self-Determination

The mediator brings to the mediation process a conviction that, in almost every case, the parties will be better off if they settle their differences. When mediation is court-ordered, it is with the historically-accurate expectancy that a high percentage of cases will settle and thus free up court time and resources. A mediator's settlement percentage may be a factor in the evaluation of that mediator's performance, and that information may be sought in a mediator's application for listing with a mediation organization, in annual reports he or she is required to file with a licensing body, and in selecting a mediator. Some attorneys whose clients are in mediation want a mediator who can push the parties to settle by using evaluative and other techniques - in other words, something close to a judicial settlement conference. They may reason, usually incorrectly, that mediation is a waste of time and money otherwise.

In fact, a common standard for mediators is the principle of self-determination, *i.e.*, that the parties' negotiations are facilitated by the mediator, that the parties have the sole decision-making authority, that they have the knowledge and capacity to (and do) make voluntary agreements, and that the mediator does not coerce or unfairly influence a party to make a settlement agreement. One of the

principal values of mediation arises from empowering each party to make an informed choice, free of manipulation, misrepresentation, or influence by the mediator. The standards, based on legal models, insert qualifiers like "intentional," "knowing," and "undue" or "unfair" before those terms. Each mediator in each separate mediation makes judgments, consciously or not, about how far into these gray scales he can go.

It is not the mediator's job to settle cases; that is the job of the parties and their counsel. The mediator's duty is to create an ethical environment in which the case may (or may not) be settled. This includes the use of techniques for developing interests and needs, for generating and evaluating options, and for promoting self-determination. This view may stray from what some consider are the practical realities, but it is one in which a skilled mediator can be more effective than a "basher."

Included in Appendix (A)(5) to Rule 31 of the Tennessee Supreme Court under the subject of self-determination, the mediator is also required to promote a balanced process. The mediator also has the duty to encourage the parties to conduct the mediation in a non-adversarial manner, and to promote mutual respect among the parties during the mediation process. While the skills and experience of the mediator will help to achieve these aspirational goals, it is the process itself that, allowing for venting, sets the stage for achievement.

### Competence

Rule 31 requires that a mediator must maintain professional competence through, for example, continuing education. She also "shall decline appointment,  
(Ethical...Continued on Page 6.)

(Ethical...Continued from Page 5.)  
withdraw, or request technical assistance"

when she decided that a case is beyond her competence. Beyond the rules, the mediator should have diagnostic competency. In my opinion, no family mediator should be licensed without having undergone advanced domestic violence training and served as a co-mediator in such cases. The problem of domestic violence is quite common, and a mediator must be able to unearth it to avoid a mediation in which there is intimidation or the absence of free consent. There are other situations where a mediator needs to be able to diagnose the dynamics of a relationship, e.g., employer-employee, as well as the capacity of the parties.

Some claim that substantive competency is an important criterion in selecting a mediator, and that such competency is an ethical obligation for the mediator to consider in deciding whether or not to take a case. Unfortunately, the mediator often is not given the opportunity to make that decision because of the prejudice against selecting a mediator without demonstrated expertise, e.g., in securities, construction, malpractice, intellectual property and other disputes. I believe that this is a case of the cart before the horse. The prime selection criterion should be the quality of the mediator as mediator. The mediator then has the obligation to determine if the matter is beyond her competence, or if it would be too costly for the parties or herself to gain subject matter familiarity.

#### Professional Advice

A mediator cannot serve as an attorney or counselor for the parties, and he should advise them that he is not a judge or a jury with respect to their dispute. He may give them information, but must make sure that he advises them to seek independent legal, counseling or other resources when it is apparent that the party does not understand or appreciate how an agreement may adversely affect his legal rights. See

Rule 31, App. A (8). Despite the desire of plaintiff's and defendant's/insurer's attorneys for mediators who have a lot of tort experience that might enable them to predict outcomes (generally, in order to reduce the plaintiff's expectancies), a mediator may only point out possible outcomes, but should not offer a firm opinion as to how the court would resolve the issue. See Rule 31, App. A (8)(d).

In my experience, a useful device is the calculation of a fair settlement value as advocated by John W. Cooley at pages 66-72 in his book, *Mediation Advocacy*, a 1996 publication of the National Institute of Trial Advocacy. If the parties working separately and together on such a calculation does not lead to a resolution, the mediator may find the key to a "silver bullet" solution.

Ken is a Rule 31 Listed Family and Civil Mediator and is Of Counsel with the law firm of Neal & Harwell PLC in Nashville. This is the first of a series of articles Ken will write regarding ethics in mediation.

#### **(Postal...Continued from Page 4.)**

Anyone interested in becoming a Mediator for the U.S. Postal Service should write to REDRESS Task Force, United States Postal Service, 475 L'Enfant Plaza, S.W., Room 1P635, Washington, D.C. 20260-0004.

Wright is a Rule 31 listed mediator and attorney in Knoxville. He is also a court certified mediator and attorney in North Carolina.

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